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EXAMINER

FOX, CHARLES A

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/684,032

Applicant(s)

NOLAN, CHRISTOPHER S.

Examiner

Charles A. Fox

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on February 5, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-6,9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. In regards to claim 1 Fell et al. (US 3,951,284) teach a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the end of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not teach the opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claim 2 Fell et al. further teach tubes (45,48) attached to the access openings of the liner (20).

Regarding claim 4 Fell et al. further teach that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

In regards to claims 5 and 6 Fell et al. also teach access openings for containers having openings on one or more sides depending on the configuration of the container.

Regarding claims 9 and 10 Fell et al. teaches a method of installing a moisture proof liner for a container comprising the steps of:

- providing a liner with four elongated panels and two end panels of impervious material to complete the liner;

- cutting an access opening in the liner;

- positioning and erecting the liner in the container;

- transferring cargo into the container and sealing the liner to protect the moisture against moisture;

- attaching an open ended tube to the access opening of the liner;

- passing cargo through the tube and opening during transfer of the cargo.

While Fell et al. do not teach the method of providing an opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to provide the opening at a location in the liner corresponding to where there is an opening in the container.

Claims 3,7, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al as applied to claims 1 and 2 above, and further in view of Krein et al.

In regards to claim 3 Fell et al. teach the limitations of claim 2 as above, they do not teach the liner and tubes as being a plastic sheet material joined by heat welding of the

minating surfaces. Krein et al. (US 5,028,197) teach a plastic liner with joints that are fused together using heat. See column 5 lines 43-57.

In regards to claim 7 the limitations of claim 1 are met by Fell et al. as above, they do not specifically teach the liner as having gussets. However it would have been obvious to one of ordinary skill in the art, at the time of invention that gussets would be formed on the liner during the course of folding the liner and that the gussets would disappear as the liner was inflated.

In regards to claim 11 the limitations of claim 10 are met by Fell et al. as above. Fell et al. do not teach holding the upper corners of the tube to offer protection during transfer of cargo. Fell et al. do teach supporting the tube during loading and unloading with a stand (47) and a chute (44). It would have been obvious to one of ordinary skill in the art, at the time of invention that the supports for the tube taught by Fell et al. could be modified in many ways depending on the size of the tube and the nature of the cargo being transferred onto or off of the container.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. in view of Krein et al. as applied to claim 7 above, and further in view of Derby. Fell et al. in view of Krein et al. teach the limitations of claim 7 as above they do not teach the end panels as being gusseted. Derby US 5,746,862 teaches using a liner for a container with panels having gussets (22,24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the gussets taught Derby on the liner taught by Fell et al. in view of Krein et al. in order to allow easy storage of the liner when not in use as well as making deployment of the liner easier.

***Response to Arguments***

Applicant's arguments filed February 5, 2003 have been fully considered but they are not persuasive. In regards to the arguments against the rejection of claims 1,5 and 9 applicant states that the Fell et al. reference U.S. 3,951,284 does not teach or suggest placing the openings in the liner at any place except the rear wall of the liner. Applicant is directed to column 8 lines 28-39 of the Fell et al. reference where they state "a similar type liner could be applied to a shipping vehicle having side walls, and opening doors in at least one of the walls". This is suggestion enough to one of ordinary skill in the art that the liner taught by Fell et al. can be used with a side opening container. As such the previous rejections of claims 1,5 and 9 stand as presented in paper number 9.

In regards to the arguments against the rejection of claim 6 refer to the passage of the Fell et al. reference cited above for a suggestion on why one of ordinary skill in the art would place the openings taught by fells et al. on a side panel of the liner to match the openings on a container the liner is placed into.

In regards to claim 7 and the use of gussets to allow the liner to expand, the examiner believes that one of ordinary skill in the art of making a liner of this type would be familiar with a gusset. Please refer to the definition of a gusset found in the tenth edition of Merriam-Webster's Collegiate Dictionary, where a gusset is taught as being an "insert in a seam to provide expansion". Since one of ordinary skill would be familiar with a gusset it stands to reason that they would also use it as described in Webster's dictionary.

In regards to claim 11 Fell et al. in figure 3 show the access tube for the liner being held overhead and that the cargo being transferred would be kept away from any inclement weather as the cargo is not exposed to the ambient atmospheres during loading of the vehicle. It is not clear to the examiner which limitations the rejections do not address as the applicant has merely made the assertion that "these limitations" are not taught or suggested, without positively identifying any limitations the reference does not teach. It is further pointed out that the Derby reference was not used in the rejections of claims 7 and 11, as such the arguments in regards to that reference and claims 7 and 11 are moot.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
EILEEN D. LILLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

CAF  
April 17, 2003  
*CAF 4-17-03*